# HOW MINNESOTA BECAME A STATE.*

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## I.

### PASSAGE OF THE ENABLING ACT IN THE HOUSE OF REPRESENTATIVES, FOR THE ADMISSION OF MINNESOTA TO THE UNION AS A STATE.

During the first great epoch of our national history, from 1789 to 1861, the motives governing the admission of new states were too often based upon policy and expediency rather than justice. The partisan or sectional advantages or disadvantages likely to accrue were scrutinized with much greater care than the constitutional and legal requisites for admission. It would hardly be safe to assert that even in these latter days the admission of a State is entirely free from the taint of partisanship; but during the first seventy years of our national existence there was one burning issue, concerning which the opposing parties were fearfully in earnest, and which, though repeatedly tempered by compromises, gained in intensity as time went on and rendered unbiased political action well-nigh impossible.

At the time of the adoption of the Constitution seven of the thirteen States had abolished slavery; in the remaining six that institution still existed in varying degrees of vigor. A glance at the list of States in the order of admission reveals the fact that a slave-holding State alternates with a non-slaveholding one, and that very rarely are two of the same character admitted in succession. This order is, by no means, accidental, but is the result of a succession of compromises. The object was to maintain, in so far as possible, an equilibrium in Congress, but particularly in the Senate, between the opponents and advocates of slavery. So jealously was

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this fictitious balance maintained that after the admission of Wisconsin in 1848, and until the advent of California in 1850, there were fifteen States in which the institution of slavery was fostered and the same number in which it was prohibited by law. California was admitted as a free State as part of the Compromise of 1850, and the equilibrium thus destroyed was never restored. The great contest which had abated for the moment was renewed with increased vigor by the Kansas-Nebraska Act of 1854; and when, in 1856, Minnesota applied for admission to the Union the two contending forces were striving in every possible way to gain the mastery over disputed Kansas. Such auspices as these were by no means favorable for the admission of a State, and for months and even years the "Kansas question" and other political obstacles hung like a millstone about the neck of Minnesota. Her transition to statehood was not destined to be an easy one.

On December 24, 1856, Henry M. Rice, Delegate from the Territory of Minnesota, introduced a bill to authorize the people of that Territory to form a constitution and State government with a view to their admission into the Union. The bill was referred to the Committee on Territories, of which Galusha A. Grow of Pennsylvania was chairman. On January 31, 1857, Mr. Grow reported a substitute which differed from the bill of Mr. Rice in two particulars.

The substitute, which afterward became the "Enabling Act" of Minnesota, defined the boundaries* of the proposed state as they now exist. Mr. Rice's bill named the Big Sioux river as the western boundary of the southern half of the State instead of a line due south from the outlet of Big Stone lake to the north line of the State of Iowa as specified in the committee's substitute. The substitute thus cut off a narrow strip of territory estimated by Mr. Grow to contain between 500

* "Beginning at the point in the center of the main channel of the Red river of the North, where the boundary line between the United States and the British possessions crosses the same; thence up the main channel of said river to that of the Bois des Sioux river; thence up the main channel of said river to Lake Travers; thence up the center of said lake to the southern extremity thereof; thence in a direct line to the head of Big Stone lake; thence through its center to its outlet; thence by a due south line to the north line of the State of Iowa; thence east along the northern boundary of said State to the main channel of the Mississippi river; thence up the main channel of said river, and following the boundary line of the State of Wisconsin, until the same intersects the Saint Louis river; thence down said river to and through Lake Superior, on the boundary line of Wisconsin and Michigan, until it intersects the dividing line between the United States and the British possessions; thence up Pigeon river and following said dividing line, to the place of beginning." Congressional Globe, vol. 43, appendix, p. 402.

and 600 square miles. The Territory of Minnesota, according to the Act of March 3, 1849, extended on the west to the Missouri and White Earth rivers, thus embracing a large part of the present States of North and South Dakota.*

The bill reported by Mr. Grow further provided that Minnesota should have concurrent jurisdiction over the Mississippi river and all other waters forming a common boundary between herself and any other present or future State of the Union, and that the said river and navigable waters leading into the same should be common highways free both to inhabitants of Minnesota and to other citizens of the United States, without payment of tax, duty, impost, or toll. This provision was not contained in Mr. Rice's bill. The two bills were practically identical aside from the two particulars mentioned.

Each of them alike provided that on the first Monday in June (1857) delegates were to be chosen to meet at the capital on the second Monday in July. These delegates were, first of all, to determine by vote whether or not the people of the proposed State wished to be admitted into the Union; if so, they were to draft a constitution and take all necessary steps for establishing a State government. In case of decision for immediate admission, the United States Marshal was to take a census of the inhabitants of the proposed State in order to determine its representation in the House of Representatives.

In addition to the above provisions, several propositions were made, which, if accepted by the people of Minnesota, were to be binding on the State and the national government alike. It was thus proposed that sections sixteen and thirty-six in every township of public land in the State be granted for the use of schools; that seventy-two sections of land be reserved for the support of a State University; that ten sections of land be devoted to the completing of the public buildings of the State or for the erection of others at the capital; that all the salt springs in the State, not exceeding twelve in number, with six sections of contiguous land, be granted for State use, this, however, with the proviso that no individual

* For the territorial boundaries of Minnesota see Neill's History of Minnesota, pp. 492 and 493. There are two rivers tributary to the Missouri and known as White Earth. One is in the present State of South Dakota, while the other flows from the north into the Missouri in the northwestern part of North Dakota, about sixty miles east of the Montana line. The latter is the one mentioned in fixing the boundaries of the Territory of Minnesota.

rights in the springs were to be abrogated; and that five per cent. of the sales of all public lands within the State be granted to the State for internal improvements.*

In commenting upon the boundaries of the proposed State, John S. Phelps, of Missouri, called attention to the fact that the Ordinance of 1787 provided that not less than three nor more than five states should be formed from the Northwest Territory.† Since five States had already been formed, he urged that it would be a violation of the ordinance to incorporate a part of that Territory in a new State as Mr. Grow proposed to do.‡ He thought it inconsistent that this provision of the ordinance should be violated while the article§ prohibiting slavery should be so strenuously insisted upon. Mr. Grow thought no violence would be done to the spirit of the ordinance. He could see no violation of compact in incorporating in adjacent territory a little "gore of land" left outside of the organized States. Mr. Garnett of Virginia made an unsuccessful attempt to sidetrack the bill by laying it on the table. Mr. Boyce of South Carolina said there could be no objection to the admission of Minnesota in case her population was sufficient. Mr. Grow replied that trustworthy estimates placed the population between 175,000 and 200,000 inhabitants.¶ There was very little debate. Mr. Grow forced a vote under the "whip and spur of the previous question," and the bill was passed by a vote of 97 to 75, as follows:

| | Americans. | Republicans. | Democrats. | Whigs. | Unionist. | Total. |
|---|---|---|---|---|---|---|
| Yeas..... | 7 | 38 | 29 | 23 | ..... | 97 |
| Nays..... | 24 | 4 | 28 | 18 | 1 | 75 |

* Congressional Globe, vol. 43, appendix, pp. 402-3. Such were the main provisions of the bill reported by Mr. Grow. It did not differ essentially from enabling acts previously passed and so was presented to the House with very little comment.

† Article 5 of the Ordinance of 1787. Journals of Congress, vol. 12, p. 62.

‡ Mr. Phelps did not intend this as an objection to the passage of the bill. He was in favor of its passage and voted for it; but he wished to twit Mr. Grow with a violation of that ordinance hitherto held sacred and inviolable by the Pennsylvania member. Mr. Phelps himself considered the ordinance as having no binding force whatever on Congress.

§ Art. 6. Ibid., p. 63.

¶ According to the last apportion ment, the States were allowed one representative for 93,420 inhabitants.

The bill provided that those qualified to vote at territorial elections should be allowed to vote for delegates to the State constitutional convention. This meant that aliens with certain specified qualifications could exercise the right of suffrage on an equality with citizens of the United States. During the call of the yeas and nays some of the members of the "National American" or "Know Nothing" party, as well as southern members, took occasion to explain that their opposition to the bill was due to this alien suffrage feature. Alien suffrage was contrary to the vital principle of the National American party; and aliens were, as a rule, opposed to slave labor. It will be seen by glancing at the table that the Republicans were practically unanimous in favor of the bill, only four of them voting against it. Of these four, Ezra Clark of Connecticut was elected as an "American" Republican; and Oscar F. Moore of Ohio, although elected to the 34th Congress as a Republican, disclosed evidence of "American" sympathies and was the candidate of the American party for the next Congress. The votes of the Democratic and Whig parties were quite evenly divided. According to the tenets of the American party their entire vote should be cast against the bill, but the northern Americans were placed between two fires. They would gladly vote to admit a free State, but the alien suffrage feature was very objectionable; as a result, seven of them voted in the affirmative and eight in the negative.* Although the vote as a whole was not strictly sectional, the bulk of the support of the bill came from the North and of the opposition from the South.†

* Six of these negative votes came from New England, and two from New York.

† Eighty-five of the ninety-seven votes cast in favor of the bill came from the North, and forty-eight of the seventy-five votes in opposition came from the South. Some familiar names are found among the members voting on the bill. On the affirmative were Schuyler Colfax, afterward vice president of the United States during Grant's first term; William H. English, afterward candidate for the vice-presidency with Hancock at the head of the ticket; Justin S. Morrill of Vermont, now the "father of the Senate;" C. C. Washburne of Wisconsin, E. B. Washburne of Illinois, and Israel Washburne, Jr., of Maine. These Washburnes were brothers and members of a family which has since become prominently identified with the industrial and political life of Minnesota.

## II.

### THE ENABLING ACT IN THE SENATE.

Having passed the House, the bill went to the Senate on February 2, 1857, and was referred to the Committee on Territories, of which Stephen A. Douglas of Illinois was chairman. On February 18, Mr. Douglas reported the bill back to the Senate without amendment, and on the 21st it came up for consideration. Mr. Douglas explained the provisions of the bill as Mr. Grow had done in the House. Asa Biggs of North Carolina offered an amendment providing that only citizens of the United States be allowed to vote for delegates to the State constitutional convention. The whole of the vigorous contest in the Senate was made on the principle contained in this amendment. The discussion was protracted by grace of senatorial courtesy nearly to the end of the session. The bill as passed by the House permitted alien suffrage as instituted by the territorial legislature, and against this feature the senators from the slave-holding states made a vigorous but unsuccessful crusade. Mr. Douglas wished the bill to pass the Senate without amendment, as he considered a recommitment to the House at that late date meant defeat for the measure as far as that Congress was concerned.

Mr. Biggs took the floor in behalf of his amendment. He disclaimed being "tainted with 'Know Nothingism,'" but held that in the formation of organic law suffrage should be restricted to citizens of the United States. He argued that the principle embodied in his amendment was found in the Oregon bill, and that it would be manifestly unjust to allow aliens to vote in Minnesota while in Oregon suffrage was restricted to citizens of the United States. Inasmuch as the Oregon bill had not yet come before the Senate but was still in the hands of the Committee on Territories, the absurdity of making it a precedent was apparent and Mr. Douglas was not slow to perceive and emphasize it. This same question of alien suffrage had been exhaustively discussed during the Kansas-Nebraska controversy; and though the present discussion was little more than threshing over some of the old straw of the famous Act of 1854, yet the senatorial flails plied with almost ceaseless activity and with unabated vigor.

In reply to Mr. Biggs, Mr. Douglas went into the history of the matter. The Act of March 3, 1849, he said, under which the Territory of Minnesota was organized, provided that the qualifications of voters should be fixed by the territorial legislature, provided only that none but citizens of the United States, and those who had declared on oath their intention to become such, should exercise the right of suffrage. Acting under the authority thus conferred, the legislature of the Territory had prescribed that citizens of the United States, and other persons who had resided in the Territory for one year and had declared their intention to become citizens, could vote in case they possessed certain other qualifications not necessary to be specified here. Mr. Douglas contended that this arrangement had proved satisfactory in every respect and should be left intact. Mr. Biggs held that the uniform practice was to allow none but citizens to vote, while Mr. Douglas correctly maintained that there was no uniform rule in regard to the matter. He further contended that it would be unjust and a breach of good faith on the part of Congress to exclude any from voting for delegates to the State constitutional convention who had hitherto exercised the right of suffrage under the laws of the Territory.

Mr. Brodhead of Pennsylvania held that the right to vote pertained to citizenship, and denied the power of Congress to make any but citizens voters. The Constitution, he said, had given Congress the power "to establish a uniform rule of naturalization." This Congress had done, and it would be an infraction of the law of Congress and of the Constitution to permit aliens to vote. He held, too, that the Ordinance of 1787 provided for citizen suffrage exclusively. To this Mr. Pugh of Ohio objected, and Mr. Brodhead quoted from the ordinance to fortify his position. In so doing, however, he read a clear and decided provision for alien suffrage.* The result must have been to stultify completely that portion of his argument, yet he seems to have gone bravely on.

Senator Brown of Mississippi followed with an able argument against alien suffrage. A State, he held, can confer the

* "Provided also, That a freehold of fifty acres of land in the district, having been a citizen of one of the states, and being resident in the district, or the like freehold and two years' residence in the district, shall be necessary to qualify a man as an elector of a representative." Congressional Globe, vol. 43, p. 809; quoted from the Ordinance of 1787. Journals of Congress, vol. 12, p. 60.

elective franchise upon whom it pleases; but it is for Congress to say whether or not aliens shall vote for delegates to the State constitutional convention. He argued, not for the unconstitutionality, but for the inexpediency, of allowing aliens to vote. He disclaimed any sympathy with the Know Nothings. "I despise their doctrines as much as anybody does," was his emphatic assertion. As a matter of public policy, he contended, alien suffrage is dangerous. "There may be," he said, "in this Territory Norwegians who do not read one word of English. . . . . What a mockery, and what a trifling with sacred institutions is it to allow such people to go to the polls and vote!"*

John Bell of Tennessee, afterward the presidential candidate of the so-called Constitutional Union party,† followed with a remarkable argument,—remarkable alike for the political and constitutional heresies which it contained and the tenacity with which he clung to them. His friends and foes, although at variance in the main, were almost unanimous in opposing the main issue of his argument. Mr. Bell took issue with Mr. Brown and declared that the State had not the sole power to fix the qualifications of her voters. This right to regulate suffrage inside of the State had been held, both before and since, to be within the undisputed province of the individual States‡; and, in taking his remarkable stand, Mr. Bell was treading upon the State rights corns of many of his fellow senators,—an imposition not slow to be resented. When informed of the fact that alien suffrage was permitted by law in Virginia, his ready answer was that in that case Virginia was violating the Constitution of the United States. If this be true, no less than fifteen states are in like manner violating the Constitution to-day.§

* Cong. Globe, vol. 43, p. 810.

† The resurrected wreck of the American or Know Nothing party.

‡ Constitutional Law, T. M. Cooley, p. 261.

§ The power of naturalization resides in Congress exclusively; but State legislation has operated, in effect, so as practically to appropriate that power for the several States. Many of the State legislatures, by various laws, have bestowed upon aliens the most important attributes of citizenship. According to State law an alien can reside here without hindrance; and in many States he can "hold, convey, and transmit," real estate to his descendants. The privilege of voting is given to him in fifteen States. When an alien enjoys these important attributes of citizenship, there is but little distinction between him and a citizen. "Indeed, as the suffrage would seem particularly to belong to citizens, and as the voter for representatives in the State legislature may vote for representatives in Congress also, it would seem that there might be some question whether a State could confer upon an alien this high privilege. It is a question, however, which has never been made." Cooley, p. 80. Inasmuch as the question has never been adjudicated, the presumption is that the prevailing practice is constitutional.

Mr. Mason, of Virginia, correctly held that when a State was once admitted she had full control over the qualifications of her electors. He was, however, in favor of the amendment, proposed by Mr. Biggs. There was danger, he thought, that some provision might be inserted into the constitution of the new State favorable to aliens, but prejudicial to the interests of the State and Nation.

Mr. Biggs then cited precedents to prove his case. He said that the Enabling Act for Ohio restricted the right of voting for members of the State constitutional convention to "male citizens of the United States."* Such certainly was not the case. Section 4 of this Act, after specifying the conditions under which citizens of the United States may vote, provided that "all other persons having, in other respects, the legal qualifications to vote for representatives in the General Assembly of the Territory, be, and they are hereby, authorized to choose representatives to form a convention."† The Ordinance of 1787 authorized alien suffrage in the Territory and the Enabling Act extended that privilege to voting for delegates to the State constitutional convention. Mr. Biggs further stated that the enabling acts for Indiana and Illinois entitled citizens of the United States to vote for representatives to a constitutional convention; all of which is true, but it is not the whole truth. These two enabling acts provided for alien suffrage in almost the exact words quoted above from the Ohio Act.‡

Mr. Douglas cited the law in the cases of Illinois and Indiana; and Mr. Biggs revived his former absurdity of making a precedent of the Oregon bill, which was still in the hands of the Committee on Territories.

Isaac Toucey of Connecticut argued against the amendment. In his opinion the electoral qualifications should remain as specified by the territorial legislature.

William H. Seward of New York maintained that the constitutionality of alien suffrage was settled long ago. Texas, he said, was admitted to the Union without having a single citizen of the United States.§ The right of suffrage, he ar-

* Cong. Globe, vol. 43, p. 812.
† Annals of Congress, 7th Congress, 1st Session, p. 1349.
‡ Annals of Congress, 14th Congress, 1st Session, p. 1841.
§ In the "Joint Resolution for annexing Texas to the United States," nothing is said of the qualifications of electors. (U. S. Statutes at Large, vol. 5, p. 797.)

gued, should be co-extensive with the obligation to submit to, support, and defend the government. As a matter of public policy, too, it was best, in his opinion, to allow alien suffrage in new States, because the population of these States is composed largely of aliens.

Mr. Butler of South Carolina thought that the time had passed for questioning the right of a State to prescribe the qualifications of her electors; yet he was not in favor of allowing any but citizens of the United States to participate in the organization of a new State.

Henry Wilson of Massachusetts, the "Natick cobbler," must have found it extremely difficult to voice in the Senate the sentiments of his varied constituency, inasmuch as he owed his election to a coalition of Democrats, National Americans, and Free Soilers. Yet there was no equivocating on his part, and when he had finished his terse and vigorous speech, there could be no doubts in the mind of any one regarding his position. He pronounced emphatically against alien suffrage, and while declaring the principle of the Biggs amendment to be just, politic, and expedient, he announced his intention to vote against it; and, in giving his reasons for this apparent inconsistency, he gave utterance, no doubt, to the thought which was uppermost in the minds of many of his more politic, but less candid, colleagues from the North. "Minnesota," he declared, "will come into the Union robed in the white garments of freedom; and I can give no vote that shall put in jeopardy her immediate admission into the sisterhood of free Commonwealths."* In his opinion, the passage of the amendment would operate to postpone indefinitely the admission of the State.

Mr. Crittenden of Kentucky argued that it was against the spirit of the Constitution to allow aliens to vote. He insisted that allowing an alien to vote was practically the same as making him a citizen, which is clearly not the case. An alien possessing the privilege of suffrage, simply, lacks some very important attributes of citizenship. "By conferring on an alien the highest prerogative of citizenship, do you not, in effect, for all political purposes make him a citizen?" Taking the word "political" in its restricted sense, Mr. Crittenden's

* Cong. Globe, vol. 43, p. 813.

question is clearly entitled to an affirmative answer; but there are privileges of citizenship other than political ones. An alien might be allowed to vote in a State, and yet not have the privilege of permanently residing there or of acquiring, holding, or transmitting real estate. This is not a probable case, but is theoretically possible. These privileges, it is true, are frequently granted to aliens and operate partially to obliterate the distinction between an alien and a citizen; but the State can never, without the power to naturalize,—which it does not possess,—grant to an alien "all the privileges and immunities" which the Constitution guarantees to the citizens of each state.* Making an alien a voter is certainly not making him a citizen; but it must be admitted that, by the grace of State legislation, the difference is in many cases not very marked.

Clement C. Clay, Jr., of Alabama, called Mr. Seward to task for his statement that suffrage should be co-extensive with the duty of obedience to government. In that case, he argued, the privilege of suffrage should be extended to both sexes, to infants, to blacks and reds as well as whites,—in short, to all races, all ages, and all sexes. He announced his intention to support the amendment, but disclaimed any sectional prejudice and disavowed even the slightest sympathy for the Know Nothing party.

Mr. Adams of Mississippi denied the constitutional power of Congress or the States to confer the elective franchise upon aliens. There is, he said, no decision of the United States Supreme Court affirming the right of either to do so. The simple answer to this is that no such decision is essential. In the absence of adjudication, the statutes conferring the privilege of suffrage are presumed to be valid. Such is the general rule regarding all statutes whose constitutionality has never been tested.†

After being thus thoroughly discussed in all its bearings, the amendment was passed by a vote of 27 to 24; the southern senators, as a rule, voting in the affirmative, and those from the North in the negative.‡

* Constitution, Art. IV., Sec. 1, Cl. 1.

† Cooley, p. 154.

‡ Twenty-three of the affirmative votes were cast by southern senators, and the remaining four by northern men. These four votes were cast by John R. Thomson (Dem.) of New Jersey, Solomon Foot (Rep.) of Vermont, Richard Brod-

After the amendment of Mr. Biggs was thus disposed of, Senator George W. Jones of Iowa, at the instance of citizens of Minnesota then in Washington, offered an amendment permitting the people of Minnesota to decide by vote whether the proposed State should have the boundaries specified in the bill or should embrace only that portion of the Territory lying south of the forty-sixth parallel.* The amendment met with but little favor and was speedily rejected.

The bill was then passed by a vote of 47 to 1, John B. Thompson of Kentucky casting the solitary negative vote. It was very evident, however, that this disposition of the bill was by no means satisfactory to its friends. The bill as amended would have to be returned to the House for consideration, and as the session was to expire in ten days it was not at all probable that the bill could be passed.

Accordingly, John P. Hale of New Hampshire at once gave notice that he would in due time move to reconsider the vote by which the bill was passed. On February 24 he did so, explaining that his intention was to reach and reconsider the amendment of Mr. Biggs.

Breezy Mr. Thompson of Kentucky, being the only senator who voted against the bill, thought it incumbent upon him to define his position. This he proceeded to do entertainingly and candidly, if not logically. He thought the bill was improved by the amendment of Mr. Biggs, but should not be passed either amended or not amended. "I am against the bill," he said, "with or without amendments. I am against it *velis et remis*, teeth and toenails, throughout." Our domain, he held, was being extended too much with no strong central government to hold it from breaking asunder; "for state rights is the great doctrine of the day." He charged that Minnesota was to be brought into the Union prematurely and hastily, merely to satisfy the ambition of politicians. He quoted from a letter written† some years before by Gouverneur Morris to Henry W. Livingston, to the effect that Con-

head, Jr. (Dem.), of Pennsylvania, and Hamilton Fish (Whig) of New York. Robert Toombs of Georgia was the only man from the South voting in the negative. Lewis Cass, Stephen A. Douglas, and William H. Seward, are found among the "nays;" while Judah P. Benjamin, John J. Crittenden, and the eccentric Sam Houston, together with James M. Mason and John Slidell, afterward conspicuous in the "Trent Affair," appear among the "yeas."

* The 46th parallel is a little above the line dividing the Dakotas. It crosses the center of Morrison county a few miles north of Little Falls.

† Cong. Globe, vol. 43, p. 849.

gress did not have the power to admit a State formed from territory not belonging to the United States at the time of the adoption of the Constitution. The letter further stated that the writer had always held that, should Canada or Louisiana* be acquired, they should be governed as provinces and have no voice in the federal councils. Adherence to this doctrine would, of course, exclude Texas, Florida, and those States organized in the Louisiana purchase and the Mexican cession. Here Mr. Thompson gave utterance to a reason for opposing the admission of the new State which others of his Southern colleagues, doubtless, entertained but were too politic to express.

"Whenever the State of Minnesota," he said, "shall be admitted, we shall have in this body two additional voices against what I think are the best interests of the country. I am not, as a southern man, going to vote to help them to bludgeon us. I am not going to put into their hands the club with which to cleave down a brother. When they are admitted, they will, like all new States, be continually asking for public lands for schools; for alternate sections of land for roads; and we shall have propositions for lighthouses, for harbors, and for lake defenses; and we shall be told about the adjacency of the Canada border and the necessity of protection. When a Minnesota senator lands here with all the pomp and circumstance of a bashaw with three tails, with the aristocratic gravity of an English Chancellor of the Exchequer, he will open his budget, and unfold proposition after proposition for roads, for canals, for lighthouses, for improvements of various kinds. You will find, after admitting Minnesota, that, like the name of many a Tommy in an old man's will, the name of Minnesota, the youngest child, will occur oftener on the statute book and the proceedings of this body, than the name of the Lord God in the twentieth chapter of Exodus. Then Minnesota, like California, now the youngest State, will be the presiding genius and divinity of the proceedings of Congress. I do not want representatives here from Minnesota for their votes, or their power, or what they will do after they get here."†

* The date of the letter was December 4, 1803.

† Cong. Globe, vol. 43, p. 849.

Such were the breezy and candid, but, at the same time, cynical and narrow views of the senator from Kentucky. Continuing in a more sanguinary mood, he said: "These Minnesota men, when they get here and see my friend from Michigan [Cass] and my friend from Iowa [Jones] struck down,* will grapple up their bones from the sand, and make handles out of them for knife blades to cut the throats of their Southern brethren. I want no Minnesota senators."† He declaimed violently against further acquisition of territory. "I know," he says, "some men talk about annexing Canada and all New France; but I hope that, when they come in, we shall go out. I do not wish to have any more of Mexico annexed, unless you annex it by a treaty so controlling its regulations and municipal institutions as to erect it into a slave State. The equilibrium in the Senate is destroyed already. There is now an odd number of States, and the majority is against the slaveholding States.‡ I want no hybrid, speckled mongrels from Mexico, who are free-state people. It is bad enough to have them from New England, christianized and civilized as they are. . . . . My notion of governing the territories, is, that they ought to be governed by a proconsul, and pay tribute to Cæsar. I would not puff them up with treasury pap or plunder in the way of public lands, like an Austrian horse that is sleek and bloated with puff, instead of real fat and strength, by putting arsenic in his food. Are you to stall-feed the people in these Territories? No, sir. I would treat them differently. Like boys that get too big for their breeches, they ought to have rigid discipline administered to them; they ought to be made to know their place, and constrained to keep it. We are told of there being two hundred thousand people in Minnesota. I don't care if there are five hundred thousand. The greater part of Minnesota is situated in the Louisiana purchase. This, it seems to me, under the treaty of Louisiana, is incontestably slave territory, and should remain in territorial form until free-soilism dies out."§

Senator Thompson further launched into an eloquent defense of the Supreme Court, which had been called by Senator John P. Hale of New Hampshire the "palladium of slavery,"

* Cass was retired at the close of that session, and Jones two years later.
† Cong. Globe, vol. 43, p. 850.
‡There were at this time thirty-one States, of which sixteen were non-slaveholding. California was admitted last.
§ Cong. Globe, vol. 43, p 850.

and asserted that whenever these revered and venerable expounders of the Constitution are taunted or plucked by the beard, it is done by a barbarian Gaul invading the sacred precincts of the Capitol. He added: "Though they may sit, as the Roman senator did, in the forum, when his beard was plucked, recollect that then came the price of the freedom of Rome; it was first the sword and then the foot of Brennus in the scales that measured out justice, or what purported to be justice, between parties." *

Some senators, he said, seem to think that these Territories are as a matter of right entitled to admission as States under certain circumstances. Such, he held, is not the case; the Constitution says that new states may be admitted, but there is no obligation upon Congress in the matter. What census shows us that there are 200,000 people in Minnesota? "I suppose it is like every new country which is settled up. A man goes there, seizes a favorable locality, lithographs a plan of a city, makes out harbors and roads, and sends a flying fraud all over the country; and then comes to Congress to get appropriations and a new State made. The moment you admit a senator from this State, he will be as most of these men are (I say nothing about anybody personally), arrogant, assuming, pretentious, Free-soilish, and Democratic. He will set himself up as the emblem of representative wisdom, like Pallas from the brain of Jove, full-grown and panoplied for armor and public plunder. He will ask for all manner of appropriations you can imagine. The territorial delegates annoy us enough in the lobbies now, and I do not want to have Senators here from these places."†

After delivering himself of these petulant and dyspeptic views, Mr. Thompson entered upon an elaborate defense of the institution of slavery, asserting that a man had as much right to own a negro as he had to own a black horse or a black dog. Returning to the matter under discussion, he declared that the electoral vote of Minnesota would be cast against the best interests of the South; that her senators would oppose southern interests in voting upon contested seats; and that their general course would be prejudicial to the section from which he came. Commenting upon public opinion in the new

* Cong. Globe, vol. 43, p. 850.
† Ibid., p. 850.

States, he said, "Such are the avaricious and exorbitant demands of the new State people, that if General Washington were to die to-day, he being from an old State, the new States would not give a piece of land two feet by six in which to inter him." *

Continuing, he ventilated his ideas anew upon territorial government. "Instead of taking in partnership and full fellowship all these outside Territories and lost people of God's earth, I would say, let us take them, if we must do it, and rule them as Great Britain rules Afghanistan, Hindostan, and all through the Punjab, making them work for you as you would work a negro on a cotton or sugar plantation."† He rebuked Senator Butler of South Carolina for conceding too much to the North. These northern men, he said, are of that same race which overran the Roman empire, and "will they not be attracted by the sunny fields of the South? When by poverty and want they get as hungry, and ferocious, and desperate, as their own prairie wolves, and when they come down, as they eventually will, to invade the South, and divide off your fields, you may have some Virgil to sing over it; but I say that by your conduct in this case you are leading to a course by which you will shiver your own household gods on your own hearthstones, and you will not be masters in your own country. Do you want these Sclaves, and Germans, and Swiss, and all mixed up nations of that sort, with their notions of government, unfitted it would seem by inheritance and instinct for free government, to swarm up in these northern latitudes, and eventually come down upon the South? First, I do not wish them there; next, I do not wish them to outvote us."‡ Mr. Thompson concluded his remarks with a eulogy upon the narrow and bigoted doctrines of the National American party.

Mr. Douglas took occasion to reply to some of the arguments of Mr. Thompson, leaving the absurdities of the latter's remarks unnoticed; because he preferred to consider them, as he said, rather the outcome of humor than of malice. Mr. Douglas was of the opinion that is was clearly the duty of Congress to admit a State into the Union when that State

* Cong. Globe, vol. 43, p. 851.
† Ibid., p. 851.
‡ Ibid., p. 851.

possessed the qualifications requisite for such admission. Especially was this true, he held, of States formed out of the Louisiana purchase, since, according to the treaty by which Louisiana was acquired, the inhabitants of that territory were entitled to admission as soon as they were prepared for it.*

Mr. Thompson asked by what clause in the Constitution a Territory is entitled to admission because she has a certain number of inhabitants. In reply, Mr. Douglas held that when a Territory had population enough, according to the ratio of representation, to entitle her to one representative in Congress, she was then entitled to admission. If not then, the treaty might remain nugatory forever. He held that there was no moral right to vote against the admission of a State because of her politics or her institutions. He proclaimed that he had never hesitated to vote for the admission of a slave state because by so doing he was increasing the power and votes of the South, and denied that any senator could properly vote against the admission of a free State because the institutions of the North were not acceptable to him. He contended that since Nature had made more of this country adapted to free than to slave labor, it was folly and worse than folly to attempt to maintain an equilibrium between the free and slave states in the Senate. He argued that it was necessary to organize new States and Territories to accommodate our ever increasing population, which would continue to increase in spite of the senator from Kentucky. (Mr. Thompson was a bachelor.)

In commenting upon the suffrage question, Mr. Douglas said that he considered the qualifications laid down by the legislature of the Territory as entirely satisfactory. He pointed out the fact that, before an alien could vote in Minnesota, he would have to turn his back upon the haunts of the eastern cities, build a home in the wilderness or on the prairie, and remain there for a certain specified time. He apprehended no abuse of the privilege of suffrage from such men as these; but admitted that greater stringency should prevail upon the seaboard. He argued against any necessity for uni-

*That part of the treaty of April 30, 1803, referred to by Mr. Douglas, is found in its Article III., which is as follows: "The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States." (U. S. Statutes at Large, vol. 8, pp. 200-202.)

formity in electoral qualifications in the various states.* During the course of his remarks, Mr. Douglas took occasion to reply† to some flings made by Mr. Thompson derogatory to the character of the people of Minnesota, and stated in conclusion that his object in urging a reconsideration was to reach the "odious amendment" of Mr. Biggs.

Mr. Green of Missouri, who had voted for the Biggs amendment, announced his intention of changing his vote, not because he did not believe in the principle of the amendment, but because he considered that Congress would be doing an injustice in excluding from the privilege of suffrage many who had exercised that right under territorial laws. For this change of opinion Mr. Green was destined to be severely arraigned.

Mr. Adams of Mississippi insisted that, in excluding aliens from voting for delegates to the State constitutional convention, Congress was depriving them of no privilege which they had ever possessed. He also claimed that the House had not noticed the alien suffrage feature of the bill, else its passage would have been more stubbornly contested.‡ In conclusion, Mr. Adams disclaimed any political or sectional prejudice.

At this juncture, the head of the breezy Mr. Thompson of Kentucky appeared above the troubled surface long enough to pay his respects to the arguments advanced by some of his opponents. By way of introduction, he complimented the ability of Mr. Seward and professed admiration for that power which enabled him, while representing New York, to carry New England in one pocket and Ohio in the other. He wittily described the contest which he said would take place between the Republicans and Democrats for the foreign vote in the various States, and interpreted their zeal in behalf of alien suffrage as a sop to the foreign vote. There was doubtless some truth in this latter assertion.

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* Hamilton's opinion on the idea of uniformity in conferring the elective franchise is interesting in this connection. "To have reduced the different qualifications in the different States to one uniform rule, would probably have been as dissatisfying to some of the States as it would have been difficult to the Convention." (Federalist, No. 52.)

† "I do not believe that there is a State in this Union, whose people have a higher character for intelligence, for sobriety, for obedience to the law, for loyal principles, for everything that affects the Union and the Constitution, than the people of Minnesota." Congressional Globe, vol. 43, p. 854.

‡ During the call of the yeas and nays in the House, some members explained that their hostility to the bill was due to the alien suffrage feature. The matter, however, was not discussed; in fact, Mr. Grow pushed the bill to a vote, and allowed very little discussion on any feature of it.

Mr. Bayard of Delaware antagonized alien suffrage. He asserted that to allow an alien to vote was repealing the naturalization laws, which is clearly not so. Suffrage is not all of citizenship. Even according to Mr. Bayard himself, suffrage is but the "first and best" prerogative of citizenship.

Mr. Butler again spoke, prophesying dire calamities from allowing aliens to vote. "I know, sir," he said, "that this Confederacy is to run its course. I believe it will tread the path and run the hazards of all republics; and I believe we cannot restrain it. . . . . Let it run."*

The motion to reconsider the vote by which the bill was passed was carried February 24, 1857, by a vote of 35 to 21.

Mr. Biggs thereupon argued strenuously for the principle contained in his amendment, and declared that "by a fair construction" no enabling act passed by Congress authorized alien suffrage; which position, as shown by the above extracts from the enabling acts, is entirely untenable. Though Minnesota was clearly destined to be a non-slaveholding State, he would favor its admission with his amendment, notwithstanding the fact that the equilibrium between the North and South would then be entirely destroyed.

Mr. Brown wanted to know the cause of what he characterized as a marvelous change of sentiment on the part of the Senate. Has foreign influence crept in and taken possession of the Senate? he asked. Robert Toombs thought the eloquence of his friend, Mr. Brown, extraordinary and unnecessary, and begged to be excused from being alarmed at what he deemed imaginary evils. In speaking of alien suffrage, he said: "It was the practice of our forefathers; it has worked well; it violates no part of the Constitution of the country."† He was against the amendment because he did not want to take away privileges conferred by the territorial legislature.

Sam Houston of Texas added a word in favor of the Biggs amendment; and Mr. Crittenden spoke in a like strain. The Senate was then forced to adjourn for lack of a quorum.

Early upon the following day, February 25, Mr. Douglas pressed the bill upon the attention of the Senate. Upon motion of Mr. Green, the vote on the Biggs amendment was reconsidered, the vote for reconsideration being 31 to 21.

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* Cong. Globe, vol. 43, p. 859.
† Ibid., p. 863.

Mr. Biggs charged that some malign influence had been brought to bear upon the Senate, which, he said, was swayed and controlled by foreign influence, until its deliberations had degenerated into a scramble for alien votes.

Mr. Brown, in a remarkably explicit and concise speech, took issue with Mr. Bell regarding his ideas upon alien suffrage. Mr. Brown held it to be bad policy to allow unnaturalized foreigners to vote, but within the undoubted province of the States to do so. In bewailing the waning influence of the old States, he said: "The two votes of the good old mother of States and statesmen ought not to be borne down by the votes of two others brought here on such a basis."* Still deprecating what he terms the power of foreign influence in the Senate, he declared that, "Some strange phantasy has come over the spirit of our dream."

Mr. Bell reiterated the views which he previously expressed; and in a long and labored argument, in which he held it contrary to the naturalization laws for States to admit aliens to the privilege of suffrage, he persistently confused the prerogatives of the voter and the citizen. Robert Toombs furnished a full and complete refutation to his elaborate argument in two short, simple sentences. "I wish," said Toombs, "to correct the senator in a statement. He does not distinguish between the right of suffrage and citizenship." Mr. Bell asked Mr. Brown if the people of New York could allow Canadians to vote in their State, after a brief residence; or if, in like manner, the people of Texas could constitutionally permit Mexicans to vote in Texas. Mr. Brown replied emphatically and correctly in the affirmative.†

The amendment of Mr. Biggs was then rejected, the vote for it being 24 yeas to 32 nays. The bill was then passed, as it came from the House, by a vote of 31 to 22; and was signed on the same day, February 25, 1857, by the president *pro tempore.*

* Cong. Globe, vol. 43, p. 874.

† Although the above are extreme cases and not likely ever to occur, since they are contrary to sound public policy, the constitutional right of the State so to act can hardly be questioned.

## III.

### THE CONSTITUTIONAL CONVENTION.

In accordance with the Enabling Act, delegates to the State constitutional convention were chosen on the first Monday in June, 1857. Of these delegates the majority belonged to the newly organized Republican party.* The second Monday in July was the day named in the Enabling Act for the assembling of the delegates at Saint Paul. The hour of meeting was not specified and this omission led to serious embarrassment in the deliberations of the convention, as well as to strenuous objection and delay in the acceptance of the constitution by Congress.

The Republicans, fearing that the Democrats might anticipate them and effect an organization of the convention, proceeded to the Capitol at midnight preceding the day designated, and there remained in quiet possession of the hall of the House of Representatives. The Democrats held that 12 o'clock noon was the usual and legal time for the assembling of such bodies when no particular hour was specified. Accordingly, about noon, July 13, 1857, the Democratic delegates, accompanied by Charles L. Chase, Secretary of the Territory and a delegate also, made their appearance at the Capitol. Mr. Chase and J. W. North, a Republican delegate, proceeded simultaneously to call the convention to order. Mr. North nominated Thomas J. Galbraith as president *pro tempore*, while Mr. Chase put a motion to adjourn, upon which the Democrats voted in the affirmative and left the hall. On the day following they assembled in the Council Chamber and organized.

Each of the two bodies, the Democratic and Republican, claimed to be the Constitutional Convention and proceeded to draft a constitution. A conference committee was finally appointed, and on August 29, 1857, both wings of the convention adopted the same constitution. This constitution was ratified almost unanimously on the 13th of October, and on the same day state officers and congressional representatives were chosen. George L. Becker, William W. Phelps, and

* Neill's History of Minnesota, p. 626.

James M. Cavanaugh, all Democrats, were chosen to represent the new State in the National House of Representatives; and in the following December the legislature elected Henry M. Rice and James Shields as United States senators.

## IV.

### THE ACT BY WHICH THE STATE WAS ADMITTED.

#### PRELIMINARY DISCUSSION IN THE SENATE.

On January 11, 1858, President Buchanan notified Congress that he had received from Samuel Medary, governor of the Territory of Minnesota, a copy of the constitution for the proposed State, certified in due form. The copy mentioned was sent to the Senate. On motion of Mr. Douglas, the whole matter was referred to the Committee on Territories.

A bill for admission was reported to the Senate in due time, and on January 28, Mr. Douglas urged its consideration. Jefferson Davis of Mississippi opposed present consideration, and was upheld by the vice president, John C. Breckenridge of Kentucky. On February 1, Mr. Douglas again tried to call up the bill, but Mr. Gwin of California insisted on the consideration of the Pacific railroad bill, which he had in charge. Mr. Douglas urged that in justice to the senators elect from Minnesota the bill should be acted upon at once. These senators, Henry M. Rice, and James Shields, had been in Washington since the early part of the session waiting to be admitted to their seats. Crittenden and Seward supported the position taken by Mr. Douglas, while Mr. Gwin, supported by some of the southern senators, demanded consideration for his railroad measure.

Kansas was seeking admission at this time under the Lecompton (or Slavery) constitution, and many of the southern senators were desirous of postponing action upon the Minnesota bill until the Kansas question was disposed of. In this they were successful, as will be seen subsequently. Mason of Virginia wanted to wait and see the attitude of the northern senators on the Kansas matter, and was in favor of taking up the Minnesota and Kansas bills together. He thought it

might be necessary for the "southern States to determine where they stand in the Union."

Mr. Wilson of Massachusetts, in reply, stated that he and others were determined to oppose in every way the admission of Kansas under what he termed the "Lecompton swindle." He insisted that there was no connection between the Minnesota and Kansas cases and hence no reason for considering them together. Mr. Bayard opposed the immediate consideration of the Minnesota bill, saying that the main object of the northern men seemed to be to get in the new senators. Mr. Hale thought it unjust to alter the regular order of proceedings in order to wait on Kansas. Mr. Douglas held that, since the Kansas matter was not now before the Senate, it would be ridiculous to enter into the merits of the question.

Mr. Brown insisted, in an incendiary speech, that Kansas and Minnesota should stand or fall together. Assuming a menacing attitude, he said: "If you admit Minnesota and exclude Kansas, standing on the same principle, the spirit of our revolutionary fathers is utterly extinct if this Government can last for one short twelvemonth."* Do you want, he asked, two more senators to aid you in excluding Kansas?

Mr. Crittenden thought the admission of Minnesota a mere formal proceeding, and considered it an injustice to delay the admission of that State simply because there was a controversy about Kansas. He gave utterance to strong Unionist sentiments, and charged some of his old colleagues with trying to strengthen their arguments by prophesying the overthrow of the government.

To this Mr. Green replied: "Here let me say, this Union cannot be sustained by singing songs to its praise. If we find the car of the Republic sunk in the mire, and get down on our knees and sing praise to it, and call on the gods to aid us, and put not our own shoulder to the wheel, it will never be extricated from the difficulty." We must strive to meet and ward off the difficulties which beset us. "This is the only method of preserving this glorious Union."†

The contest for precedence between the Minnesota and Pacific railroad bills was thus sharply waged until the shades

* Cong. Globe, vol. 44, p. 501.
† Ibid., p. 503.

of evening put an end to the debate and decided that both measures, for that day at least, should be postponed.

### THE APPLICATION OF THE SENATORS.

On February 25, 1858, Mr. Crittenden presented to the Senate a letter from James Shields, one of the Senators elect from Minnesota. Mr. Shields held that the Enabling Act authorized the people of Minnesota to form a State constitution, "and to come into the Union;" and that, the provisions of the act having been complied with, Minnesota was *ipso facto* a State in the Union, and that no further action in the matter on the part of Congress was necessary. This being the case, he asked to be allowed to assume his seat. Mr. Crittenden presented the credentials of Mr. Shields, and asked that he be sworn in.

Johnson of Arkansas, and Mason and Hunter of Virginia, contended that there was no such State as Minnesota recognized by the United States Senate; while Crittenden, Simmons of Rhode Island, and Pugh of Ohio, held to the contrary. It was cited, by way of precedent, that the senators and representatives from Indiana took their seats before the State was formally admitted, and that in the case of Ohio no formal act of admission was passed at all, a committee being appointed to examine her constitution. Mr. Brown of Mississippi presented the clearest and best argument in the case, in which he asked, Who accepted the constitution of Minnesota? Who has pronounced it republican in form? Who guarantees to us that she has complied with the provisions of the Enabling Act? These questions were unanswered and unanswerable from the point of view of the opposition. Robert Toombs offered a resolution, which was adopted, referring the matter to the Judiciary Committee, "with instructions to inquire whether or not Minnesota is a State of the Union under the Constitution and laws." On March 4, 1858, Mr. Bayard, in behalf of the Committee, reported "that Minnesota is not a State of the Union."

Nothing more was heard of the Minnesota bill in the debates of Congress until March 23, 1858. Although the constitution of Minnesota was sent to the Senate before the Kansas con-

stitution,* the southern senators were successful in holding the former in abeyance until the bill for the admission of Kansas under the Lecompton or Slavery constitution was passed by the Senate. On this date, March 23, Mr. Douglas asked that the bill be considered, and thought there should be no opposition inasmuch as the Kansas question was now disposed of as far as the Senate was concerned; but Mr. Gwin pressed the claims of the Pacific railroad bill, and the remainder of the day was passed in fruitless debate.

On the following day, March 24, Mr. Doolittle of Wisconsin said that, since there had been a tacit understanding that the Minnesota bill was to be considered immediately after the Kansas matter was disposed of by the Senate, good faith to the friends of Minnesota demanded that the bill be taken up at once. Mr. Gwin again objected in favor of his Pacific railroad bill, and was supported by Bigler of Pennsylvania, Broderick of California, and Mason of Virginia; while Wade and Pugh of Ohio, Stuart of Michigan, Seward of New York, Bright of Indiana, Crittenden of Kentucky, and Johnson of Tennessee, contended for the priority of the Minnesota bill. Mr. Mason thought the Senate should suspend action upon the Minnesota bill until the House had disposed of the Kansas question. Mr. Seward scouted the idea as absurd. Wade and Crittenden held that the admission of men entitled to seats in the Senate should take precedence of all other business.

After this discussion, the Senate, by a vote of 30 to 16, voted to take up the Minnesota bill.

### THE BILL IN THE SENATE.

The bill as a whole differed little from the usual form for such acts, but there was one feature which caused a division in the committee and provoked an animated discussion in the Senate. The census provided for by the Enabling Act was not finished, and the returns from the work already done upon it were not above suspicion. This led to serious embarrassment in determining the representation in the House. The bill, as reported by Mr. Douglas, provided for one representative for the present and as many others as the completed census should show the State entitled to. Mr. Douglas explained

* The Constitution of Minnesota was transmitted to the Senate on January 11, 1858; that of Kansas on February 2, 1858.

that he opposed this feature of the bill in the committee, but had to accede to it in order to get the bill before the Senate.

The new constitution of Minnesota provided for three representatives, and three had already been elected. Mr. Douglas was in favor of allowing them all to take their seats at once. Others were opposed to such an action. Various amendments were proposed. Douglas was supported by Pugh, Doolittle, and others; while Green, Brown and Wilson argued for two representatives, and Mason, Collamer and Crittenden favored one only. Some wished to refer the matter to the House for decision, but others held that the representation of a State should be decided by Congress and not by the House alone. Some proposed to strike out the section entirely; which, as Mr. Green showed, would be equivalent to allowing three representatives as provided in the State constitution.

Mr. Douglas called attention to the embarrassment which would ensue in determining which one or two of the three elected should be admitted. Mr. Pugh thought that that difficulty might be obviated by admitting first the man who received the highest vote, while others held that the three were now on the same basis and that the majorities received were matters of no significance. Mr. Bayard would have Congress decide upon the number of representatives, but would leave it to the House to determine which one or two of the three elected should be admitted in case all were not.

Mr. Jones of Iowa argued for three representatives on the ground that less than that number would be unable to attend to the interests of the new State. The simple answer to this was that population is the basis of representation and not the amount of business to be transacted.

Mr. Wilson proposed to allow one representative now, and to have a new census taken at once in order to determine the number of additional representatives, if any, to which the State is entitled. Mr. Toombs proposed to allow three until the new census was completed; and then, if it turned out that the State was not entitled to them, one or two of them should be retired. The difference between these two propositions seems slight, but Mr. Iverson of Georgia objected strenuously to Wilson's proposal, because, as he said, that plan involved a new election for the one or two additional members to which

the state would likely be entitled. The reason is clear. Mr. Iverson was a Democrat, and the three representatives elect from Minnesota were also Democrats. A new election might result favorably to the Republicans. You may tell me that my fears are imaginary, said Iverson, and perhaps they are; "but I fear there is a cat under the meal tub, and I am not willing to risk it."

The matter was compromised by voting to allow Minnesota two representatives until the next apportionment, which was all that the State could in equity demand, for reasons to be noted directly. The census as far as completed showed a population of about 140,000 souls. Mr. Douglas estimated the population of the counties from which no returns had been received at 10,000. Under the apportionment law then in force, each State was entitled to one representative for 93,420 inhabitants. A population of 150,000 would, as Mr. Douglas himself admitted, legally entitle the State to only one representative, since a major fraction did not at that time necessarily entitle the State to an additional member. But the integrity of the census was impeached. It was held that the pay of the deputies was inadequate, and that therefore the work was not thoroughly done. A letter was presented from the United States marshal reciting the many difficulties under which the census was taken.

Some of the supporters of Mr. Douglas would have preferred to brush aside the census entirely and be governed by other estimates. Some in arguing for three representatives took the number of votes cast for State officers—40,000 in round numbers—and multiplied it by six to obtain an estimate of the population. This multiplier is too high for any frontier country. Mr. Collamer aptly hit off this method of calculation. He said it reminded him of the method employed by a man who wanted to know the weight of his hogs, but had no scales. He put a large stone on one end of a slab to balance the hogs at the other and then guessed at the weight of the stone. Even 240,000 inhabitants were not enough for three representatives. In a running debate upon this subject between Douglas and Mason the latter had decidedly the best of the argument. Mr. Fitch of Indiana claimed that no mis-

take could be made by allowing Minnesota three representatives as her population would soon entitle her to that number, if, indeed, she had not sufficient already, to which it might be said that present and not prospective population should be made the basis for representation.

During the above discussion, which lasted for several days, various other objections to the admission of the State were urged. Mr. Brown announced that he did not approve of the constitution, but would vote for admission to keep faith on the slavery question. He was particularly averse to allowing aliens and persons of mixed white and Indian blood to vote. Mr. Trumbull stated that the State legislature of Minnesota was passing laws, and that they were being approved by the Territorial governor. Such legislation as this, he added, would be held a nullity in any court in Christendom. He held also that according to the constitution the members of the House of Representatives of Minnesota were elected for life;* a feature, he continued, not in harmony with republican institutions.

It was with great difficulty that Mr. Douglas was able to obtain the attention of the Senate for consecutive days upon the Minnesota bill. One of the principal causes of delay was the Kansas bill, from which the House struck out all after the enacting clause, and submitted and passed a substitute. The Southern members forced this substitute upon the attention of the Senate, and considerable time was spent in agreeing to disagree upon it. The debate upon the Kansas question was so intensely sectional that it left a bad atmosphere for the discussion of other matters. Finally, a considerable time was devoted to the Minnesota bill on April 6 and 7, and the vote upon it was taken on the latter date.

Various objections were made on the ground that Minnesota had not complied with the provisions of her Enabling Act. The split convention was held to be illegal. The representatives were elected at large, while the law of Congress required that they should be elected by congressional districts. It was held that more delegates were elected to the

* The constitution does not place any definite limit to the terms of office of the representatives. Incidentally a term of two years may be inferred. Constitution of 1857 in Debates of the Constitutional Convention, (Democratic Wing) p. 654 and (Republican Wing) p. 607.

State constitutional convention than the Enabling Act permitted.*

Anthony Kennedy, a Unionist Whig senator from Maryland, opposed the admission of the State because of the alien suffrage feature in her constitution, which, he held, was contrary to the Constitution of the United States and against the interests of the South. He was opposed to the "squatter sovereignty" feature because it destroyed the equilibrium of the Senate. He quoted from the speeches of Calhoun at length to establish the unconstitutionality of alien suffrage. He held that only citizens of the United States could constitutionally vote, and that the States were compelled to allow such citizens to vote within their limits. Mr. Johnson of Tennessee took exception to this latter statement—that a State was obliged to allow a United States citizen to vote—and clearly showed the absurdity of it. By way of acknowledging his error Mr. Kennedy, with due senatorial suavity, maintained the correctness of his position and assured Mr. Johnson and the Senate that he would come to that point directly; which, of course, meant, according to congressional interpretation, that he would take great care not to come to it at all.

Mr. Brown became sarcastic in decrying Indian suffrage. "All you have to do," he said, "is to catch a wild Indian . . . . give him a hat, a pair of pantaloons, and a bottle of whisky, and he would then have adopted the habits of civilization, and be a good voter."† This thrust elicited from Sam Houston, the foster child of the red man, an eloquent defense of that much abused personage.

The vote upon the bill was finally taken on April 7, 1858, and resulted in 49 yeas and 3 nays; Clay of Alabama, Kennedy of Maryland, and Yulee of Florida, voted in the negative.

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* Section 3 of the Enabling Act provided that two delegates be chosen for every representative to the territorial legislature. The Minnesota authorities construed the word "representative" to apply to Councillors as well as to Representatives proper. This construction made a convention of 108 members. Some of the senators insisted that the word "representative" should be construed as meaning a member of the lower house of the territorial legislature, thus making a convention of only seventy-eight members. The latter is, of course, the more plausible construction.

† Cong. Globe, vol. 45, p. 1514.

### THE BILL IN THE HOUSE.

Since the Enabling Act was passed, a new House had been organized and a new Speaker elected. G. A. Grow of Pennsylvania was replaced as chairman of the Committee on Territories by Alexander Stephens of Georgia, and it was to the care of the latter that the bill was now entrusted. On the day after the passage of the bill by the Senate, a message was sent to the House informing that body of the Senate's action. Mr. Stephens made repeated but unsuccessful attempts to have the bill taken up, but finally succeeded in his efforts on May 4.

The old question of representation came up, and much the same line of argument was pursued as in the Senate. Mr. Stephens wished to allow Minnesota three representatives, and was supported by W. W. Kingsbury, then the territorial delegate from Minnesota. Mr. Garnett of Virginia contended for one; but John Sherman of Ohio was the most determined of all in his opposition to the admission of the new State, being the most severe, acrimonious and partisan in his strictures upon her.

In place of the bill then before the House, Sherman offered a substitute, the preamble of which recited that the constitution of Minnesota "does not conform with the constitution and laws of the United States." He would remand the entire constitution back to the State for revision. No legal convention, he held, ever sat in Minnesota; it was a "double-headed mob," composed of 108 instead of 78 delegates; and the representatives were not elected by districts, but at large. He could see no reason for this unless it was to allow uncivilized Indians to vote for three representatives instead of one. In the hurry of their miserable strife, he said, no tenure of service was set for representatives; it was a predetermined plan to hold office as long as possible. The utter absurdity of this latter statement needs no comment and deserves no notice. Albert G. Jenkins of Virginia answered Sherman's arguments *seriatim* and with considerable ability.

Indian suffrage was severely denounced by Mr Garnett. No such provision, said he, was ever heard of except it be in "Nicaragua or some such pretended republic of South Amer-

ican barbarians;" the makers of such a provision would not seem, he added, to be "eminently capable of 'enjoying the rights of citizenship.' "* Mr. Blair of Missouri continued in much the same strain. "At one of the precincts," he said, "one pair of breeches was obtained, and thirty-five Indians were successively put into it, and in that way it was ascertained that they had adopted the habits of civilized life."†

Mr. Anderson of Missouri, in arguing against the alien suffrage feature, voiced a sentiment which many others doubtless had in mind, but were too politic to express. He said: "I warn gentlemen from the South of the consequences that must result from maintaining the right of unnaturalized foreigners to vote in the formation of State constitutions. The whole of the Territories of this Union are rapidly filling up with foreigners. The great body of them are opposed to slavery. Mark my word: if you do it, another slave State will never be formed out of the Territories of this Union. They are the enemies of the South and her institutions."‡ His words were as prophetic as they were candid, for another slave State was never admitted. After quoting from a speech said to have been made by John C. Calhoun in opposition to the admission of Michigan, Mr. Anderson became grandly eloquent in his argument against the constitutionality of alien suffrage.

Mr. Davis of Maryland, and Mr. Smith of Virginia, also opposed the alien suffrage feature of the bill. The latter made one of the longest speeches in the entire discussion, in which he utterly confused citizenship and suffrage, and which he interspersed with quotations having no application whatever to the point at issue. One of his colleagues, Mr. Millson, reminded him of the fact that his strictures upon the alien suffrage clause of the Minnesota constitution could, with equal force, be applied to his own State, Virginia, where unnaturalized foreigners could vote. Mr. Bliss of Ohio clearly showed that the fundamental error of Mr. Smith lay in considering the term "citizen" and "elector" as synonymous, when they are not so. Bliss admitted the inexpediency, but not the

* Cong. Globe, vol. 45, p. 1953.
† Ibid., vol. 45, p. 1953.
‡ Cong. Globe, vol. 45, p. 1980.

unconstitutionality, of allowing aliens to vote. He considered the irregularities so emphatically dwelt upon by his colleague, Mr. Sherman, as matters of no vital importance. Mr. Ricaud of Maryland quoted from Calhoun's now famous Michigan speech to the effect that States could not naturalize,—a fact which no one since the foundation of the government has disputed, a point which the most ardent advocate of State rights never claimed.

Mr. Stephens made little of the irregularities over which Mr. Sherman had previously pounded the pulpit so fiercely. He held it sufficient that the constitution of the proposed State was republican in form and expressed the will of the people. He held that even the election of representatives for life would not make the constitution anti-republican, since many States had elected their judiciary for life and no objection was made. Mr. Stephens then turned his attention to the famous speech of John C. Calhoun, from which his opponents had derived so much inspiration and argument. It must have greatly lessened the influence of this speech, said to have been delivered in opposition to the admission of Michigan, when Mr. Stephens remarked that the speech was not to be found in the Congressional Globe, and that the records showed no objection on the part of Mr. Calhoun to the alien suffrage feature of the Michigan constitution, and that in another instance he voted for alien suffrage. Mr. Stephens was refreshingly clear in distinguishing suffrage from citizenship. In speaking of the difference, he said: "Great confusion seems to exist in the minds of gentlemen from the association of the words citizen and suffrage. Some seem to think that rights of citizenship and rights of suffrage necessarily go together; that one is dependent on the other. There never was a greater mistake. Suffrage, or the right to vote, is the creature of law. There are citizens in every State of this Union, I doubt not, who are not entitled to vote. So, in several of the states, there are persons who by law are entitled to vote, though they be not citizens."*

The discussion was thus prolonged, with the interposition of other business, until the eleventh of May. On this date Mr. Sherman's substitute was rejected by a vote of 51 to 141,

* Cong. Globe, vol. 46, p. 2059.

and the bill was passed as it came from the Senate, the vote being 157 to 38.* The Speaker and the President signed the bill on the same day that it was passed by the House.

## V.

### THE ADMISSION OF THE SENATORS.

The State having been admitted, the next thing in order was the admission of the senators and representatives. This is usually a merely formal process devoid of public interest; but, in this case, unexpected opposition was developed.

On May 12 Robert Toombs presented the credentials of Mr. Henry M. Rice as a United States senator from Minnesota, and moved that the oath of office be administered to him. Mr. Harlan of Iowa then presented a communication from certain settlers on the Fort Crawford Reservation in his State, setting forth that Henry M. Rice, as agent for the Secretary of War, had charged them $1.50 per acre for their land, instead of $1.25 as directed by the Secretary of War, and that he had refused to receipt to them for more than $1.25 per acre. Some other charges of fraudulent dealings were also made. Mr. Harlan presented these allegations to the Senate, but made no motion. Mr. Brown thought the charges no bar to the admission of Mr. Rice, but proceeded to object on other grounds. States, and not Territories, he held, can elect senators; and because Minnesota was a Territory when Mr. Rice was elected, he affirmed that the election was null and void.† Mr. Seward characterized this objection as psychical rather than practical. Mr. Benjamin called the attention of the Senate to the fact that they would find upon their desks a communication from the War Department, in which Mr. Rice explained that the twenty-five cents per acre extra were expended for the interests of the settlers and cheerfully paid by them. He characterized Mr. Harlan's action as unusual, discourteous, and even cruel. Mr. Toombs made a few remarks about the judgment appropriate for a senator and a gentleman, and requested a vote. Mr. Pugh suggested that,

* The opposition came equally from the North and South, and was politically as follows: Republicans, 12; Americans, 11; Whigs, 9; Democrats, 3; Free-Soilers, 2; Unionist, 1.

† Senators had in other instances been elected before the formal act of admission was passed.

if Mr. Harlan's high standard of morality made it impossible for him to occupy a seat in the Senate with Mr. Rice, there was a very simple remedy,—to resign. Jefferson Davis came to Mr. Harlan's rescue, and explained that that gentleman was simply acting for his constituents.

Mr. Rice was then sworn in. Mr. Toombs next presented a resolution of the Minnesota legislature giving the long term to Mr. Rice and this was referred to the Judiciary Committee. Mr. Rice now stated that he was taken entirely by surprise by the charges preferred by Mr. Harlan, and was not prepared to enter into an elaborate defense. He stated, however, that he had acted in strict accordance with the instructions of the Secretary of War, and that if any fraudulent act should appear upon investigation he would resign his seat in the Senate.

The oath of office was then administered to James Shields, the other senator from the new State.

Two days after his admission, Mr. Rice moved that an investigation be made into the charges preferred against him by Mr. Harlan. The motion was carried, and the matter was referred to the Committee on Military Affairs. On June 9, 1858, Jefferson Davis in behalf of that committee made a report completely exonerating Mr. Rice. Mr. King and Mr. Wilson did not concur in the report, however, as they considered the method of selling public lands worthy of condemnation. Mr. Wilson was careful to explain that he imputed no criminality to Mr. Rice. The report was adopted on motion of Mr. Davis.

## VI.

### THE ADMISSION OF THE REPRESENTATIVES.

On May 13, 1858, Mr. Phillips of Pennsylvania presented the credentials of William W. Phelps and James M. Cavanaugh of Minnesota and moved that they be sworn in as members of the House of Representatives. The motion encountered an uncompromising antagonist in John Sherman. He held that the credentials of the two men were signed by Samuel Medary, governor of the Territory of Minnesota, but that they should be signed by the governor of the State under the State Seal. He said that Mr. Medary was then postmaster at

Columbus, Ohio, and could by no manner of means certify to the election of representatives from another State. Where, he asked, are the credentials of the third man elected?* He contended that there was no legality in tossing up a copper to determine which men should be admitted. He held their election entirely void, and insisted that Minnesota should have no representative in the House until after the next regular congressional election.

On motion of Mr. Millson of Virginia, the credentials were referred to the Committee on Elections with instruction to inquire into the rights of Messrs. Cavanaugh and Phelps to seats. On May 20, 1858, Mr. Harris of Illinois, in behalf of the majority of the committee, submitted a report favoring the admission of the representatives, with the proviso that such admission "should not be construed as precluding any contests of their right to seats which may be hereafter instituted by any persons having the right so to do."† On May 22 printed copies of the majority and minority reports were submitted. The majority report held that the Enabling Act authorized the election of the representatives before the actual admission of the State; that there were precedents for election by general ticket instead of by congressional districts; and that the fact that three were elected was immaterial, since credentials were presented for only two.

The first minority report was signed by Ezra Clark (Am. Rep.) of Connecticut, James Wilson (Rep.) of Indiana, and Jno. A. Gilmer (Am.) of North Carolina, and held the election void because it took place while Minnesota was yet a Territory. It held that the precedents for such an election were fit only to be reversed and expunged. It held further that there was no way known to law by which two of the three elected could be designated, and that the certificates of election presented were mere nullities because not signed by any State officer. The recommendation was that Messrs. Cavanaugh and Phelps be not allowed to qualify.

The second minority report was signed by Israel Washburne, Jr., of Maine, who came to the same conclusions

* Mr. Washburne of Illinois stated during the debate that the three men elected, Cavanaugh, Phelps, and Becker, had cast lots to determine which two of them should have seats in the House. Mr. Becker was unsuccessful, hence his credentials were not presented.

†Cong. Globe, vol. 46, p. 2275.

reached by Messrs. Clark, Wilson and Gilmer, but by a somewhat different course of reasoning. Mr. Washburne stated that the constitution of the State provided for three representatives, while the Act of Congress restricted the number to two; therefore, he continued, if the constitution is valid, all three are elected, if invalid, none is elected. He further stated that to allow candidates to decide who shall retire is to transfer the election from the people to the candidates.

After a discussion in which the signers of the various reports were the principal participants, the report of the majority was adopted, and Messrs. Cavanaugh and Phelps were sworn in, May 22, 1858. Thus was the North Star State, after a struggle extending from December 24, 1856, to May 22, 1858, enrolled among the American Commonwealths and duly represented in both branches of Congress.

## VII.

### THE SEAT OF THE DELEGATE.

There was a difference of opinion as to who should represent in the House that part of the Territory of Minnesota not included in the new State. W. W. Kingsbury and Alpheus G. Fuller contended for that honor. On May 27, 1858, Mr. Cavanaugh presented a resolution reading as follows: "Resolved, That the Committee of Elections be authorized to inquire into and report upon the right of W. W. Kingsbury to a seat upon this floor as Delegate from that part of the Territory of Minnesota outside the State limits."* Mr. Harris of Illinois presented the credentials of Alpheus G. Fuller as delegate from the same Territory.

The whole matter was referred to the Committee on Elections. On June 2, 1858, Mr. Harris of Illinois, chairman of that committee, submitted the majority report, holding that Mr. Kingsbury was legally elected delegate on October 13, 1857, and that the admission of a State formed out of part of the Territory did not annul that election. The case of H. H. Sibley was cited. Mr. Sibley was elected delegate from the Territory of Wisconsin after the State of Wisconsin was ad-

* Cong. Globe, vol. 46, p. 2428.

mitted. He was elected from that portion of the Territory not included in the State, and was allowed to take his seat by a vote of 124 to 62. In conclusion, the report recommended that Mr. Kingsbury be allowed to retain his seat, and that the memorials of Mr. Fuller be given no further consideration.

A minority report, signed by Messrs. Wilson, Clark, and Gilmer, decided in favor of Mr. Fuller. This report stated that Mr. Kingsbury was elected by the voters of the territory now comprising the State, and that those living in that part of the Territory not included in the State were not allowed to vote; but this was denied "upon good authority" in the majority report. It was also held that Mr. Kingsbury lived in the State of Minnesota, not in the part of the former territory left outside the State. Mr. Fuller, in the course of a long letter said that he came "without form of law, but on the inherent principle of self government and protection."

Mr. Harris contended that it was not necessary for the delegate to live in the Territory which he represented. Israel Washburne of Maine supported Mr. Harris, declaring that there was both a State and a Territory of Minnesota. Mr. Jones of Tennessee held that there was no Territory of Minnesota, and hence that no one was entitled to a seat as delegate. After considerable discussion, the majority report was adopted, and Mr. Kingsbury retained his seat until March 3, 1859.